Before the Federal Communications Commission
Washington, DC 20554

In the Matter of:	)	
	)	
Schools and Libraries Universal Service Support Mechanism	)	CC Docket No. 02-6
	)	

COMMENTS OF LIBRARY VIDEO COMPANY IN RESPONSE TO THE PROPOSED FY2010 E-RATE ELIGIBLE SERVICES LIST

Library Video Company ("LVC" or "Library Video Company") hereby submits these Comments in response to the Federal Communications Commission's ("FCC" or "Commission") June 2, 2009 Public Notice in the above-referenced proceeding, seeking comments on the Universal Service Administrative Company's ("USAC") proposed Eligible Services List ("ESL") for Funding Year 2010. At issue is whether the proposed services are eligible under the Commission's current rules.[1]

Library Video Company is a leading distributor of educational VHS, DVD, and digitally-delivered media to K-12 schools nationwide. The SAFARI Montage® suite of products includes digital media management solutions for school districts as well as educational video and audio programs, still images and document files. Since 1985, LVC has led the K-12 industry in visual instruction and is committed to ensuring that all of the nation's children receive a quality education.

---

[1] Public Notice at 1, CC Docket No. 02-6, DA 09-1233 (rel. June 2, 2009) (hereafter "Public Notice").

I. The Proposed Exclusion

The Public Notice requests public comment on the proposed changes to the ESL for the 2010 Funding Year. One of the proposed changes is to deem Video On-Demand servers to be ineligible for E-Rate discounts. Library Video Company respectfully requests that the Commission reject this change. LVC believes that eliminating funding for Video On-Demand servers (or systems)[2] is inconsistent with the public interest and contravenes existing Commission public policy determinations. In addition, LVC believes that the FCC's rules require Video On-Demand servers (and systems) to be funded by USAC. Further, the proposed change does not provide sufficient information as required by the Administrative Procedure Act, 5 U.S.C. § 500 et seq. and the Commission's rules, 47 CFR § 54.522.

II. Public Policy Requires E-Rate Funding to Be Supplied for Video On-Demand Servers

The E-Rate program has been instrumental in minimizing the digital divide for tens of thousands of schools and tens of millions of less affluent students. It has done so by providing network bandwidth and connections, which allow data and content to stream seamlessly from point to point or point to mutltipoint, thereby diminishing geographic barriers to learning. Providing functional bandwidth to poor and urban schools is at the core of the mission of The Schools and Libraries Program of the Universal Service Fund ("SLD"). Indeed, the SLD makes discounts available to eligible

[2] Since the term Video On-Demand servers is not well-defined, schools, districts, USAC and others may (incorrectly) interpret the term to apply to all elements of a Video On-Demand system. Although this possibility is not the subject of these Comments, LVC wishes to identify another potential problem with the proposed revision to the ESL.

schools and libraries through a program that "is intended to ensure that schools and libraries have access to affordable telecommunications and information services."[3]

Video streaming is a core and necessary component of distance learning, which is an eligible service.[4] Educational video (which may be video that is pre-loaded and stored or created and provided by the school or acquired by other means) is but one form of distance learning and is an educational imperative in every K-12 classroom. It has been proven that video engages the 21st Century students and increases their retention. Educational video (stored or otherwise) can be streamed to schools via the internet and to classrooms over a school's WAN or LAN from a central server. Placing servers locally saves schools, school districts and, ultimately, taxpayers money by keeping their internet bandwidth free for other vital uses.

Denying Video On-Demand servers E-Rate eligibility would have the exact opposite effect on the public and the nation's education system that the fund was designed to accomplish. Poorer schools and school districts would be forced to stream video over expensive internet connections; thereby causing them to spend more money on increased bandwidth. Video servers are essential tools for transport of data over a WAN or LAN. Accordingly, Video On-Demand servers must remain eligible for E-Rate funding.

---

[3] USAC Web site, 23 June 2009, Schools and Libraries' page.

[4] Notice of Proposed Rulemaking, In the Matter of Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Notice of Proposed Rulemaking, 23 FCC Rcd 11703 (2008) at para. 22. ("NPRM").

III. FCC's Rules Require Video On-Demand Servers to Be Funded by USAC

FCC rules make clear that funds are available to eligible schools in four (4) categories of service, including Internal Connections. The Commission has determined that Internal Connections consist of the equipment that expands data access within a school, such as to individual classrooms. The FCC has acknowledged, and repeatedly affirmed, that components, which are essential elements in the transmission of information within a school, are eligible for E-Rate funds.[5] Therefore, video servers, which are critical to deliver information within a school and/or school district must be eligible for funding. Indeed, the Commission affirmed this in the eligibility list for so-called "Internal Connections." *See* Public Notice (at pages 11-16). Therein "servers" and related equipment are identified (at page 13-14) as being eligible (to the extent that they are used as "necessary to transport information all the way to individual classrooms or public areas of a library").[6] In short, video servers, if used for eligible purposes, are themselves eligible under the Commission's existing rules.

IV. The Proposed Exclusion Does Not Effectively Define Video On-Demand Servers And Should be Rejected

The proposed exclusion does not sufficiently or appropriately describe what constitutes Video On-Demand servers and is, therefore, unlawful. The proposed

---

[5] The standard concerning the transmission of data reflects the Commission's stated perspective that distance learning is both eligible and in the public interest. *See* NPRM at 22. While the Commission's definition of "distance learning" is subject to interpretation, it must include the process by which information flows from various points to educate students. Accordingly, Video On-Demand systems, which educate students by supplying data from various sources is in the public interest and, therefore, eligible for funding.

[6] *See also*, definition of eligible "Storage Devices" and "Video Components." Public Notice (at pages 15-16). In contrast, identified as ineligible are certain fairly narrowly defined equipment such as broadcast and cable television equipment used for display or distribution of broadcast and cable television services. *See* Public Notice (at page 19).

definition, found in the Glossary provided with the Public Notice defines "Video On Demand server" simply as a "server [that] stores videos which are available for retrieval at any given time." While this description depicts one type of use, today, it is well understood that every computer can act as a server that stores video and, therefore, the Public Notice fails to provide any effective definition for what is being excluded, or why.

There is simply no commonly accepted meaning of "Video On-Demand" servers. Accordingly, neither commercial providers (such as LVC) nor schools can accurately discern what the FCC is proposing to render ineligible. Similarly, vendors and schools cannot determine what related equipment or services would also be considered eligible or ineligible. The Public Notice does not provide any additional insight into the Commission's definition of Video On-Demand servers or what it encompasses. The current Public Notice does not contain any explanation, description or policy considerations. Similarly, the National Exchange Carrier Association (NECA) and the FCC have not specified any policy reason why all or some subset of video servers or related transmission equipment used for education would be deemed ineligible. In short, no reasoned decision is provided for why, or under what condition, specific servers would be excluded from eligibility.

By not defining the category or the circumstances under which certain equipment will be excluded, schools and libraries are put in the untenable position of simply guessing what equipment will or will not be deemed E-rate eligible.[7] If they guess

[7] Anecdotally, and by way of illustration, we understand that over the past several years the FCC and NECA have deemed Cisco's Content Networking Devices (which are a family of products which route, switch and deliver voice, video and data content), eligible for reimbursement. To the extent that Cisco's CND products (or its successors), route, switch and deliver video, such products appear to be a Video On-Demand device. We do not believe that it was the

wrong, they will be forced to bear the economic burden, which will be passed onto taxpayers. This kind of "guess what we mean" funding process is inconsistent with due process and with the Administrative Procedure Act and cannot be lawfully adopted by the Commission. It is equally inconsistent with Section 54.522 of the Commission's rules (47 CFR § 54.522) which requires the USAC Administrator to issue each year a draft list of services eligible for support.

In addition, it appears that the exclusion, if adopted, is absolute: any equipment which is capable of storing video may be rendered ineligible for funding. This would be inconsistent with the cost allocation rules that apply to servers generally. Cost allocation is an acceptable, approved method of delineating between ineligible and eligible portions of a product. *See* Public Notice (at pages 13-14 for a discussion of servers and pages 8-9 for a discussion of web hosting). In fact, this methodology has been applied successfully to the SAFARI Montage suite of products. During the 2009 Program Integrity Assurance (PIA) review process, LVC has provided USAC with cost allocation information, which USAC has used to differentiate between network distribution functions and content management/storage functions. Experience suggests that cost allocating the storage components associated with Video On-Demand servers is an acceptable, natural way to separate the eligible "conduit" functions and the ineligible "storage" functions. Clearly, the cost allocation is an acceptable method and, when applied uniformly, fulfills the FCC's rules. Accordingly, the FCC should continue to apply cost allocation methodology to Video On-Demand servers, rather than creating a blanket exclusion.

The lack of a clear definition, coupled with the cost allocation methodology that

---

Commission's intention to change its rules by overturning eligibility decisions such as have been made in the CND context.

can be properly applied to these servers, requires the Commission to at least clarify the scope of the term "Video On-Demand" servers.

VI. The Proposed Exclusion Seeks to Change Eligibility Rules In Contravention of FCC's Process

The Public Notice plainly states that the FCC's review of the ESL is limited to determining what services are eligible under the FCC's current rules; it is not intended reshape any of the underlying rules or regulations: "We emphasize that this proceeding is limited to determining what services are eligible under the Commission's current rules and is generally not intended to be a vehicle for changing any eligibility rules." Public Notice (at page 2). If the FCC were to accept the proposed exclusion, the FCC would essentially invalidate the FCC's present rules. These rules manifestly provide that servers are "eligible if the use is necessary to transport information all the way to individual classrooms or public areas of a library." Since portions of the Video On-Demand servers are used to transport information to classrooms, a blanket exclusion of them would turn the FCC's rule on its head. Accordingly, the FCC should reject the proposed change.

VIII. LVC Requests a Remedy

LVC respectfully requests the Commission to identify what is meant by "Video On-Demand server" and specify those functions that would render equipment ineligible. Otherwise, the Commission must strike the tentative conclusion that all Video On-Demand services are ineligible. We urge the Commission to remove any further ambiguity regarding Video On-Demand servers by requiring USAC to publish a clearly defined, reasonable, cost allocation methodology.

Conclusion

For the foregoing reasons, the Commission cannot, at this stage in the process, lawfully conclude that "Video On-Demand servers" are categorically ineligible for E-Rate funding. The Commission should issue a Public Notice or order which clearly defines the Commission's guidelines with respect to Video On-Demand servers and provides the public with sufficient information upon which to form an opinion and advise the Commission. Otherwise, the Commission should strike its tentative conclusion regarding Video On-Demand servers.

Respectfully submitted,

Library Video Company

By:

Judith C. Koss

Judith C. Koss, Esq.
Vice President of Legal & Business Affairs

7 E. Wynnewood Road
Wynnewood, PA 19096
610.645.4000
610.645.4070 (fax)

Dated: June 23, 2009